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T. C. Memo. 1986-381

ORIGINAL

UNITED STATES TAX COURT

A. JOHN HARVEY III AND DEBORAH H. HARVEY, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 6351-84. Filed August 18, 1986.

James S. Levin, Mark L. Sumner, and William E. Fisher, for the petitioners.

Sheldon M. Kay, for the respondent.

MEMORANDUM OPINION

WRIGHT, Judge: Respondent determined a deficiency of $20,950.66 in petitioners' Federal income tax for 1981. Petitioners dispute respondent's denial of an investment tax credit.

The facts have been fully stipulated and are so found.

Petitioners A. John Harvey, III (hereinafter referred to as "petitioner" or "Harvey") and Deborah H. Harvey resided in Northboro, Massachusetts, when the petition was filed herein. On their joint 1981 Federal income tax return, petitioners claimed an investment tax credit of $17,776.50, based upon the drilling machine leasing transaction. Respondent disallowed that credit. After concessions, the sole issue is whether petitioners are entitled to an investment tax credit for equipment purchased by Harvey and leased to the corporation.

Henry L. Hanson, Inc. ("the corporation") manufactures taps, dies, and plumb bobs. It also sells drill bits. As of November 19, 1981, the stock of the corporation was held as follows:

Name	Shares of Common Stock	Shares of Preferred Stock
H. Lloyd Hanson Trust dated 3-21-56	0	96,700
Trust created by H. Lloyd Hanson on 2-28-69	100	0
A. John Harvey III (petitioner)	55	2,600
Deborah H. Harvey (petitioner)	65	6,100
Deborah H. Harvey, custodian for Katherine Harvey (petitioners' daughter)	0	2,600
Total	220	108,000

Each share of stock in the corporation had one vote. The holders of the majority of the common stock could cause the corporation to exercise an option to redeem all or any part of the preferred stock. H. Lloyd Hanson (Deborah H. Harvey's father) and Helen Hanson, his wife, were Trustees of the H. Lloyd Hanson Trust dated 3-21-56.

During 1981, A. John Harvey III, Deborah H. Harvey, and H. Lloyd Hanson (Hanson) were president, vice-president, and treasurer, respectively, of the corporation. Harvey has served as president since 1973. Hanson was also chairman of the board of directors, of which his wife, Helen Hanson and petitioners were members.

The bylaws of the corporation specify that action by the board of directors may be taken at any meeting at which a quorum is present; a majority of the directors then in office constitutes a quorum. The bylaws further provide that the president of the corporation has general supervision and control of the business of the corporation, subject to direction by the board of directors.

In response to the corporation's request, on November 25, 1980, the Lynd-Farquhar Company submitted to the corporation a price quotation for an Allen Special Three Spindle No. 2 1/2 Heavy Duty V-Belt Vertical Motor Drive Drilling and Tapping Machine (the drilling machine). On March 19, 1981, the corporation submitted to the Lynd-Farquhar Company a purchase

order for the drilling machine. While the drilling machine was under construction the corporation encountered financing problems with respect to the purchase of such machine. During that time it became apparent that industrial bond financing would not be available and the corporation did not consider it desirable either to borrow funds at the prevailing high interest rates or to expend its own funds which were intended for another purpose. Accordingly, by resolution dated November 19, 1981, the corporation's board of directors authorized the corporation to enter into leases with the president and/or vice-president to meet its equipment needs. On December 9, 1981, the Lynd-Farquhar Company sent an invoice to the corporation for the drilling machine. Harvey purchased that machine for $177,765 in order to meet the needs of the corporation. Harvey did not manufacture or produce the drilling machine.

On December 21, 1981, Harvey and the corporation entered into an equipment lease whereby Harvey leased the drilling machine to the corporation. The term of the written lease is for the shorter of 48 months or 49 1/2 percent of the useful life of the equipment. The drilling machine is section 38 property with a useful life of 10 years.

The drilling machine made only one product, adjustable dies. About 80 percent of the output of the machine is sold to one of the corporation's customers. The corporation had no long-term supply contract with that customer. The cost of modifying the

drilling machine for use by other companies in the same business would not exceed $10,000. The corporation has made no improvements to the drilling machine which would inure to the benefit of the lessor upon termination of the lease.

On December 8, 1982, the corporation sent Harvey an invoice for the expenses incurred during the first 12 months of operation of the drilling machine. Petitioner reimbursed the corporation for those expenses. Such reimbursement exceeded 15 percent of the rental income received by petitioner with respect to that machine.

During 1981, the corporation paid $95,982 in rental fees with respect to the following equipment leased from third party lessors: a computer, a truck, two copiers, welding equipment, and trailer truck bodies.

Respondent's determination in his statutory notice of deficiency to disallow the investment tax credit of $17,776.50, based upon the drilling machine leasing transaction, is presumptively correct and petitioners have the burden of proving otherwise. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a).

Section 38[1] allows a credit against tax for investments in certain depreciable property in an amount determined under

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954, as amended and in effect during the year in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

section 46. However, section 46(e)(3) limits the availability of the credit with respect to noncorporate lessors. That subsection provides in pertinent part:

> (3) Noncorporate Lessors.--A credit shall be allowed by section 38 to a person which is not a corporation with respect to property of which such person is the lessor only if--
>
> (A) the property subject to the lease has been manufactured or produced by the lessor, or
>
> (B) the term of the lease (taking into account options to renew) is less than 50 percent of the useful life of the property, and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

As this Court explained in Ridder v. Commissioner, 76 T.C. 867, 872 (1981), "[s]ection 46(e)(3) is a fairly technical provision which can best be understood in terms of its purpose. In general, Congress was concerned that individuals might be tempted to use investment credits to finance the acquisition and leasing of depreciable property as tax shelters." By establishing limitations on the availability of the investment credit, Congress intended to benefit only those noncorporate lessors actually using the section 38 property in an active business -- lessors who had manufactured or produced the property and short-term lessors. Ridder v. Commissioner, supra at 872. At the same time, Congress intended to deny the investment credit

to those purchaser-lessors who were involved merely in financing arrangements without undertaking the risks and obligations of an ongoing trade or business.

The property which was the subject of the lease under consideration here was neither manufactured nor produced by petitioner. Thus, petitioner, as a noncorporate lessor, must satisfy the requirements of section 46(e)(3)(B) in order to be entitled to the investment tax credit. These requirements are: (1) a lease term of less than 50 percent of the useful life of the property; and (2) section 162 expenses (other than rents and reimbursed amounts), with respect to the property, in excess of 15 percent of the rental income from the property for the first 12 months after the property is transferred to the lessee. Sec. 46(e)(3)(B).

For petitioners to prevail, they must first show that the term of the lease was less than 50 percent of the useful life of the property. On its face, the written lease document specified a term of less than 50 percent of the useful life of the subject property. Respondent argues, however, that the facts presented herein reflect a reasonable certainty that the corporation would continue leasing the drilling machine from petitioner for an indefinite period. He concludes, therefore, that the stated "term" of the lease should be disregarded in determining the term of the lease for purposes of section 46(e)(3)(B). Petitioners maintain, however, that Harvey entered into a written lease

agreement with the lessee, which agreement on its face meets the requirements of the statute, and that there are no facts presented here which would cause such written agreement to be set aside and the lease term to be classified as indefinite.

The provisions of written documents are not necessarily conclusive for tax purposes. Highland Hills Swimming Club, Inc. v. Wiseman, 272 F.2d 176 (10th Cir. 1959). The substance, rather than the form, of any transaction is controlling. Commissioner v. Court Holding Co., 324 U.S. 331 (1945). Thus, applying these principles, it is clear that lease terms may be disregarded. Highland Hills Swimming Club, Inc. v. Wiseman, supra, and cases cited therein.

All facts and circumstances that shed light on a transaction should be considered in deciding whether a lease is of indefinite duration rather than limited to the term stated in the lease agreement. Sanders v. Commissioner, T.C. Memo. 1984-511, affd. without published opinion 770 F.2d 174 (11th Cir. 1985); Highland Hills Swimming Club, Inc. v. Wiseman, supra at 179; Buddy Schoellkopf Products, Inc. v. Commissioner, 65 T.C. 640, 656 (1975). For purposes of section 46(e)(3)(B), the length of the lease term should be calculated in accordance with the "realistic contemplation" of the parties at the time the lease was entered into. Hokanson v. Commissioner, 730 F.2d 1245, 1248 (9th Cir. 1984), affg. a Memorandum Opinion of this Court; Ridder v. Commissioner, supra at 875. If there is a reasonable

certainty that the lessee will continue leasing the property beyond the period stated in the lease, the lease term is indefinite.[2] Sanders v. Commissioners, supra; G.W. Van Keppel Co. v. Commissioner, 295 F.2d 767, 770-771 (8th Cir. 1961), affg. a Memorandum Opinion of this Court; Standard Tube Co. v. Commissioner, 6 T.C. 950, 955 (1946).

Petitioners attempt to distinguish their case from other cases in which this Court disregarded written leases and determined certain lease terms to be indefinite by maintaining that the factors present in those cases are not present here.[3]

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[2] Peterson v. Commissioner, T.C. Memo. 1982-442.

[3] In Sanders v. Commissioner, T.C. Memo. 1984-511, affd. without published opinion 770 F.2d 174 (1985), we disregarded stated lease terms and concluded that an individual who purchased certain items of equipment and then leased them to his wholly owned corporation was not entitled to an investment tax credit because the lease term was indefinite. We considered the following facts in arriving at our conclusion: the taxpayer automatically renewed expired leases without renegotiating the lease terms, the taxpayer leased the equipment solely to his wholly owned corporation, such corporation never sought alternate leasing arrangements, the taxpayer purchased equipment to meet the specific needs of the corporation, the taxpayer sold equipment when it was no longer needed by the corporation, the lessor and the lessee were under common control, and the leasing arrangement was established for a tax savings motive. In Peterson v. Commissioner, T.C. Memo. 1982-442, a partnership leased all of its personal property to a medical corporation. The individuals who were shareholders in the corporation were also partners in the leasing partnership. The written leases were twice renewed. In concluding that the original written lease was of indefinite duration, we considered the following facts: the partnership purchased equipment to meet the particular needs of the medical corporation, the partnership had an established practice of renewing all leases; common control of the lessor and lessee existed, and, most importantly, the leasing arrangement served no business purpose other than the tax

(footnote continued)

Our conclusion, however, is based upon all the facts and circumstances surrounding the transaction and no single factor is determinative.

The evidence presented in the instant case shows that petitioner purchased the drilling machine in order to meet the specific needs of the corporation. Although the drilling machine could have been altered for use by another manufacturer, this feature was not the primary consideration in petitioner's selection of the drilling machine. Such tailoring of petitioner's purchase to the needs of the corporation indicates that, when the lease was entered into, the parties intended the lease to continue beyond its stated terms, for as long as the corporation needed the machine. Sanders v. Commissioner, supra. See Buddy Schoellkopf Products, Inc. v. Commissioner, supra at 657.

Another factor for consideration is whether petitioners controlled the corporation. Although petitioner and his wife owned a small percentage of the shares entitled to vote, together they owned a majority of the common stock. Such majority could cause the corporation to redeem all or any part of the preferred stock. Thus, petitioners could cause a redemption of the shares

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(footnote continued from previous page)
advantage. The Court also noted that the lessee had not expended a considerable sum in making improvements that would benefit only the lessor if the lease were terminated.

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of the corporation held by the H. Lloyd Hanson Trust dated March 21, 1956. Petitioners, therefore, effectively controlled the corporation.

Petitioner has been president of the corporation since 1973 and, under the bylaws of the corporation, had the powers to control generally the corporation, subject to the board of directors' direction. In addition, both petitioners were members of the four-person board of directors, and thus controlled half of the votes that could be cast. In an attempt to establish his own lack of control, however, petitioner claims that Hanson had absolute control over the corporation and all decisions pertaining to corporate matters.

As chairman of the board, in 1981, H. Lloyd Hanson did not participate in the day-to-day management of the corporation. He did, however, review all major corporate decisions. The parties stipulated that, if called upon, Harvey would testify that his relationship with H. Lloyd Hanson was not cordial or cooperative; that petitioner believed that H. Lloyd Hanson questioned petitioner's business judgment; that in 1981 H. Lloyd Hanson consented to the subject leasing transaction; and that without such consent the transaction would not have been consummated.

The evidence, however, is contrary to petitioner's assertions. On January 12, 1978, in an amendment to the 1956 H. Lloyd Hanson Trust, Hanson vested in petitioner, as trustee, the

right to exercise all voting rights and other powers with respect to the shares of the corporation owned by Hanson, such provision to take effect when Hanson ceased to be a Trustee. Although such trust was revocable and subject to amendment, we believe that Hanson's actions are relevant. Hanson apparently held petitioner in sufficiently high esteem to name him as a successor trustee with all the rights and responsibilities attendant to that office, and to grant to him the voting rights with respect to the shares of the corporation held by the Trust.[4] Accordingly, we believe that the facts establish the existence of common control of the lessor and the lessee.

There is no evidence that either petitioner leased any section 38 property, other than the drilling machine. Standing alone, the fact that Harvey leased equipment only to a related party is not determinative. When considered with the entire record, however, it suggests that the parties contemplated that the drilling machine would continue to be leased to the corporation on a long-term basis.[5]

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[4] Petitioner's claims are further refuted by the provisions of a Voting Agreement dated September 24, 1984. Hanson, as trustee and beneficiary, granted to petitioner the irrevocable right to vote the stock of the corporation held by Hanson, for the ten-year term of that agreement.

[5] McNamara v. Commissioner, T.C. Memo. 1986-300; Peterson v. Commissioner, supra.

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Upon consideration of the foregoing facts and of the entire record, we believe that respondent is correct in his determination that the lease here in question is of indefinite duration. Although the express term of the original written lease document was less than 50 percent of the useful life of the subject property, the record shows that the parties to that lease realistically contemplated that the lease would extend beyond the stated term. It is clear that the parties intended and expected that the equipment which is the subject of the lease here under consideration would be leased to the corporation for as long as it met the needs of that company. We find that there is a reasonable certainty that the corporation will continue leasing the property beyond the stated lease term and the term is, therefore, indefinite. Thus, petitioners have failed to establish that the term of the subject lease herein is less than 50 percent of the useful life of the leased property.

As discussed earlier in this opinion, Congress wanted to make the investment credit available to noncorporate lessors who were using the property in question in an active business. Ridder v. Commissioner, supra. These were determined to be, among others, short-term lessors. It was the intent of Congress to deny the credit to purchaser-lessors who were merely involved in financing arrangements. Here, the corporation ordered the drilling machine but subsequently encountered financing problems. Harvey's purchase of the drilling machine was in response to this

situation and the leasing transaction was set up primarily as a financing arrangement and was not the operation by Harvey of a leasing business. Such a transaction was not intended by Congress to entitle the lessor to investment credits.

Because of our determination that the 50 percent test for use of the investment tax credit by a noncorporate lessor under section 46(e)(3)(B) has not been met, it is unnecessary to resolve whether petitioners have met the 15 percent test under that section.

Petitioners maintain that sound business reasons, as opposed to tax savings, motivated the subject leasing arrangement. Under the facts presented here, the presence or absence of valid business reasons for entering into the subject transaction is irrelevant. See Carlson v. Commissioner, 79 T.C. 215, 225 (1982), affd. 712 F.2d 1314 (9th Cir. 1983).

For the foregoing reasons, we find that petitioners have not met the requirements of section 46(e)(3)(B) and, therefore, are not entitled to the investment credit with respect to the drilling machine.

Decision will be entered for the respondent.

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T. C. Memo. 1986-382

ORIGINAL

UNITED STATES TAX COURT

CHARLES W. ROBINSON III AND ANGELITA D. ROBINSON, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket Nos. 8292-79, 9266-80. Filed August 18, 1986.

William J. McKenney, for the petitioners.

Julian A. Fortuna, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

CLAPP, Judge: In these consolidated cases, respondent determined deficiencies and additions to tax in petitioners' Federal income tax as follows:

Year	Deficiency	Addition to Tax Section 6653(b)[1] (Liability limited to Mr. Robinson)
1975	$ 17,088.11	$ 8,544.05
1976	119,411.00	60,059.50
1977	113,842.00	56,921.00

In an amended answer, respondent alleges that the deficiency and addition to tax for 1975 are $121,746.53 and $62,370.80, respectively.

The issues for decision are: 1) whether respondent's method of reconstructing petitioners' unreported gambling income was reasonable; and 2) whether petitioner-husband is liable for additions to tax under section 6653(b).

FINDINGS OF FACT

Some of the facts have been stipulated and are found accordingly. The stipulation of facts and the exhibits attached thereto are incorporated by this reference.

Petitioners resided in Lilburn, Georgia at the time they filed their petitions in these cases.

During the years at issue, petitioner-husband (petitioner) was a bookmaker for football, basketball and baseball bets. He did not report any income from his gambling activity on his 1975, 1976, or 1977 Federal income tax return.

The Cobb County police learned of petitioner's activities through a lawful wiretap on the telephone of an individual involved in commercial gambling in Cobb County, Georgia. On

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954, as amended.

November 4, 1977, the Cobb County police informed the Gwinnett County police about petitioner's bookmaking activities. On Sunday, November 6, 1977, the Gwinnett County police raided petitioners' residence pursuant to a lawful search warrant. They seized cash, records from Southern Bell Telephone Company, tax returns, financial records, books on how to win at craps and blackjack, a black box containing dice and chips, and books and records reflecting illegal gambling transactions. They arrested petitioner and charged him with commercial gambling, a felony in Georgia punishable by imprisonment of not less than one year nor more than five years, or a fine not to exceed $20,000, or both. Subsequent to his arrest and negotiations with the Gwinnett County District Attorney, petitioner pled guilty to the lesser charge of possession of gambling devices.

On November 11, 1977, Internal Revenue agents Benjamin Herring (Herring) and Michael Schmid examined the books and records seized from petitioners' residence. Herring, who specialized in the civil enforcement of wagering taxes, and had performed detailed analyses of numerous sports bookmaking records, ordered a search of the Internal Revenue Service files to determine whether petitioner had filed wagering tax returns. When he discovered that no such returns had been filed, he began to analyze the seized records.

The books and records were either partially destroyed or incomplete. A yellow "Theme Book" contained a series of bets which totalled $190,735.00 for the 17-day period beginning

Saturday, October 26, 1974 through Monday, November 11, 1974, a period which had a disproportionate number of Saturdays, Sundays and Mondays on which days college and professional football games were played.

Petitioner's "gross wagers" during this period was more than $190,735.00, because that figure did not consider either bets recorded in other books or "vigorish," a bookmaker's commission on wagers which provides his profit margin. Petitioner's vigorish was 10 percent. If petitioner accepted a $100 bet, he received $110 if he won, or paid $100 if he lost. A bookmaker who charges a 10 percent vigorish will on average make a gross profit of 4.5454 percent of the gross wagers plus vigorish.

Herring computed petitioner's average daily gross wagers (Amounts at risk by bettors) as follows:

Gross wagers before vigorish:	$190,735.00
Vigorish (10 percent)	+19,073.50
Gross wagers	$209,808.50
Average daily gross wagers:	$209,808.50/17 days = $12,341.68

Respondent computed petitioners' unreported taxable income as follows:

	1975	1976	1977
Gross Wagers:			
$12,336.50 per day X 365 days	$4,502.822.50	$4,502,822.50	
$12,336.50 per day X 311 days			$3,836,652.00
Gross profit percentage	X 4.55%	X 4.55%	X4.55%
Unreported taxable income	$ 204,878.42	$ 204,878.42	$ 174,568.00

Respondent used gross wagers per day of $12,336.50 rather than $12,341.68 (Herring's figure) because Herring made a mathematical error in his wagering tax report. Respondent used 311 days rather than 365 days for the 1977 calculation because petitioner's activities ceased after he was arrested on November 6, 1977.

Petitioners had unreported gambling income of $204,878 in each of the years 1975 and 1976 and $174,568 in 1977.

OPINION

Petitioners concede that petitioner-husband received unreported gambling income during the years at issue. They contest only the amounts of that income.

Because the deficiency for 1975 was increased by respondent's amended answer, the burden of proof as to the increase is on respondent. As to the original deficiency for 1975 and the entire deficiencies for 1976 and 1977, the burden of

proof is on petitioner and respondent's determinations are presumed to be correct. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a), Tax Court Rules of Practice and Procedure.

If a taxpayer fails to maintain complete and adequate books and records, respondent may reconstruct taxable income using any method which clearly reflects income. Harbin v. Commissioner, 40 T.C. 373, 377 (1963). Respondent may compute excise and income tax liabilities from gambling records covering a short period of time. Dark v. United States, 641 F.2d 805 (9th Cir. 1981) (excise taxes); Gordon v. Commissioner, 63 T.C. 51, 61 (1974), modified 63 T.C. 501 (1975), affd. per curiam 572 F.2d 193 (9th Cir. 1977) (income taxes).

The method used by respondent's agent Herring to reconstruct petitioner's bookmaking income was reasonable and substantially accurate. Any inexactitudes result from petitioner's failure to maintain books and records and his unwillingness to cooperate with respondent during the audit. We find that respondent has carried his burden of proof for the 1975 increase and has more than adequately supported the correctness of his determinations for 1975, 1976 and 1977 as set forth in the original notices of deficiency.

Petitioners argue that respondent made several errors in his computation. They contend that respondent did not consider the fluctuations in seasonal betting, i.e., that more bets are placed in November when football and basketball are played than in the late spring and summer when only baseball is played. They also

argue that gamblers bet more on Saturdays and Sundays than on weekdays. Thus, respondent's numbers are inflated because respondent's average daily gross wagers figure was derived from the 17-day period in the theme book (October 26 - November 11) which included three football weekends. Respondent's agent Herring acknowledged some of these possible discrepancies but noted the omission from his calculations of bets that were not included in the theme book. We believe that given what he had to work with, Herring arrived at substantially correct results. In any event, petitioner has offered little or nothing as an alternative.

Petitioners also contend that Herring did not consider "lay-off" bets. We hold that Herring did not err. Petitioners did not establish that any lay-off bets were made. Petitioner-husband was at the trial and testified on the stand. He failed to testify about the existence of lay-off bets. Herring testified that there was a "good possibility" that some bets were layoffs. Herring's conjecture does not establish the existence of such bets.

Finally, petitioners' other contentions lack merit. Respondent does not have to use a net worth analysis to compute petitioners' unreported income. Webb v. Commissioner, 394 F.2d 366 (5th Cir. 1968), affg. a Memorandum Opinion of this Court. Respondent did not agree to petitioners' conclusions or totals; he agreed with only a few calculations petitioners made at trial. Herring did not testify that he could not identify a single day

in which petitioner had daily gross wagers of $12,000. His testimony in this regard related to daily gross profit. The figures calculated in petitioners' brief are inaccurate, incomplete and inconclusive. Petitioner-husband's self-serving and unsubstantiated testimony that his gross income (loss) from gambling was $5,000 and ($3,000) in 1975 and 1977, respectively, is unpersuasive. The record contains no evidence to support petitioners' contention that they incurred ordinary and necessary business expenses. Respondent's/Herring's formula intrinsically considered petitioner-husband's losses.

Based on the discussion above and the record as a whole, we find petitioners' unreported gambling income to be $204,878 in each of the years 1975 and 1976, and $174,568 in 1977.

As to the fraud issue, respondent bears the burden of proof. He must prove, by clear and convincing evidence, that there was an underpayment of tax some part of which was due to fraud with an intent to evade tax. The existence of fraud is a question of fact to be resolved upon consideration of the entire record. Gajewski v. Commissioner, 67 T.C. 181, 199 (1976), affd. without published opinion 578 F.2d 1383 (8th Cir. 1978). Fraud may be proved by circumstantial evidence because direct proof of the taxpayer's intent is rarely available. Stone v. Commissioner, 56 T.C. 213, 223-224 (1971).

In the present case, several indicia of fraud are present. Petitioner consistently failed to report substantial amounts of income over a number of years. Gromancki v. Commissioner, 361

F.2d 727 (7th Cir. 1966), affg. a Memorandum Opinion of this Court. Petitioner failed to maintain complete and adequate books and records. Parsons v. Commissioner, 43 T.C. 378 (1964). Petitioner failed to file wagering excise tax returns. Mitchell v. Commissioner, T.C. Memo. 1968-137, affd. 416 F.2d 101 (7th Cir. 1969), cert. denied 396 U.S. 1060 (1970).

Respondent has clearly and convincingly established fraud.

Decisions will be entered under Rule 155.